

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PENNSYLVANIA CHIROPRACTIC ASSOCIATION, NEW)
YORK CHIROPRACTIC COUNCIL, ASSOCIATION OF)
NEW JERSEY CHIROPRACTORS, FLORIDA)
CHIROPRACTIC ASSOCIATION and CALIFORNIA)
CHIROPRACTIC ASSOCIATION, on their own behalf and in a)
representational capacity on behalf of their members, and)
GREGORY T. KUHLMAN, D.C., JAY KORSEN, D.C., IAN)
BARLOW, KENDALL GEARHART, D.C., JEFFREY P. LERI,)
D.C., MICHELLE M. ASKAR, D.C., MARK BARNARD,)
D.C., BARRY A. WAHNER, D.C., ANTHONY FAVA, D.C.,)
DAVID R. BARBER, D.C., RYAN S. FORD, D.C., LARRY)
MIGGINS, D.C., CASEY PAULSEN, D.C., DEAN RENNEKE,)
D.C., ANDREW RENO, D.C., PERI L. DWYER, D.C.)
RONALD L. YOUNG, D.C., and ERIC THOMPSON, D.C., on)
their own behalf and on behalf of all others similarly situated,)
)
)
)

Plaintiffs,

-against-

BLUE CROSS AND BLUE SHIELD ASSOCIATION, BLUE)
CROSS AND BLUE SHIELD OF RHODE ISLAND, BLUE)
CROSS AND BLUE SHIELD OF ALABAMA, ARKANSAS)
BLUE CROSS AND BLUE SHIELD, BLUE SHIELD OF)
CALIFORNIA, BLUE CROSS AND BLUE SHIELD OF)
FLORIDA, BLUE CROSS AND BLUE SHIELD OF)
GEORGIA, HEALTH CARE SERVICES CORPORATION,)
INDEPENDENCE BLUE CROSS, BLUE CROSS AND BLUE)
SHIELD OF KANSAS, CAREFIRST, INC., BLUE CROSS)
AND BLUE SHIELD OF MASSACHUSETTS, BLUE CROSS)
AND BLUE SHIELD OF MICHIGAN, BLUE CROSS AND)
BLUE SHIELD OF MINNESOTA, BLUE CROSS AND BLUE)
SHIELD OF KANSAS CITY, HORIZON BLUE CROSS AND)
BLUE SHIELD OF NEW JERSEY, EXCELLUS BLUE)
CROSS AND BLUE SHIELD, BLUE CROSS AND BLUE)
SHIELD OF NORTH CAROLINA, HIGHMARK, INC., BLUE)
CROSS AND BLUE SHIELD OF SOUTH CAROLINA, BLUE)
CROSS AND BLUE SHIELD OF TENNESSEE, PREMIER)
BLUE CROSS, THE REGENCE GROUP, WELLMARK, INC.,)
and WELLPPOINT, INC.,)
)

Defendants.)

Case No. 1:09-cv-05619

Hon. Matthew F. Kennelly
Magistrate Judge Arlander Keys

Defendants' Omnibus Motion
to Dismiss, Compel Arbitration,
or Stay These Proceedings

**DEFENDANTS' OMNIBUS MOTION TO DISMISS,
COMPEL ARBITRATION, OR STAY THESE PROCEEDINGS**

Pursuant to this Court's November 18, 2009 order, all defendants respectfully move to dismiss the First Amended Class Action Complaint ("Complaint") for the reasons set forth in the memoranda of law described below. Additionally, certain defendants identified below and in the relevant memoranda move to compel arbitration and mediation and to stay the proceedings pending arbitration or mediation.

1. The twelve defendants named in Counts III, IV, and V of the Complaint purporting to state claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO") respectfully move to dismiss Counts III, IV, and V with prejudice for failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6).

2. The 24 individual Blue Cross and/or Blue Shield defendants named in Counts I, II, and VII of the Complaint purporting to state claims under the Employee Retirement Income Security Act ("ERISA") respectfully move to dismiss Counts I, II, and VII with prejudice for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) and for failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6).

3. All defendants respectfully move to dismiss claims by Association Plaintiffs and the claims of any Individual Plaintiff that has not alleged facts against a particular defendant with prejudice for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) and for failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6).

4. Defendant Blue Cross and Blue Shield of Florida respectfully moves to dismiss Count VI of the Complaint purporting to state claims under the Florida Insurance Code with prejudice because there is no private right of action under Section 627.419(4) and for failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6).

5. Defendant Highmark Inc. respectfully moves to dismiss the claims of plaintiffs Leri and Askar with prejudice because the plaintiffs' claims must be adjudicated according to the mandatory and exclusive appellate procedure and forum set forth in the Pennsylvania Professional Health Services Plan Corporation Act and because plaintiff Leri's claims should be dismissed with prejudice based upon accord and satisfaction.

6. Defendant WellPoint, Inc. ("WellPoint") respectfully moves to dismiss the claims of plaintiffs Reno and Gearhart with prejudice based upon accord and satisfaction because both settled the disputes alleged in the Complaint against WellPoint on a compromised basis and paid negotiated settlement amounts to WellPoint.

7. Defendant Blue Cross and Blue Shield of Rhode Island respectfully moves to dismiss with prejudice, or in the alternative stay, the claims of plaintiffs Korsen and Barlow because they are duplicative of claims currently pending in the United States District Court for the District of Rhode Island.

8. Finally, the defendants seek to compel arbitration and mediation and to stay this action pending arbitration and mediation because eight named plaintiffs (Paulsen, Renneke, Miggins, Gearhart, Ford, Barber, Thompson, and Young) have Participating Provider agreements ("Agreements") with their respective Blue Cross and/or Blue Shield Plans that require mandatory arbitration or mediation of all disputes arising out of or that are related to the Agreements. Plaintiffs Paulsen, Renneke, and Miggins also should be prohibited from pursuing class action arbitration where their Agreements expressly prohibit them from doing so. Additionally, the defendants seek to compel the California Chiropractic Association (who brings claims on behalf of its members) to arbitrate these claims pursuant to the mandatory arbitration provisions in the members' Agreements with defendant Blue Shield of California.

Dated: December 31, 2009

Respectfully submitted,

/s/ John J. Hamill

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CERTIFICATE OF SERVICE

I, John J. Hamill, an attorney, hereby certify that on December 31, 2009, I electronically filed the **Defendants' Omnibus Motion to Dismiss, Compel Arbitration, or Stay These Proceedings** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the parties listed on the electronic service list. A true and correct copy of the foregoing was also served by UPS upon counsel for Blue Cross and Blue Shield of Michigan whose *pro hac vice* admission before the court is currently pending at the following address:

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s/ John J. Hamill